

### **REMARKS/ARGUMENTS**

Claims 1-31 remain in the application. Of these, claims 1-21 stand rejected, and claims 22-31 are newly presented.

Support for the amendments to claims 1-4, 6-13, 15-17 and 19-21 is found, at least, on page 8, lines 15-18.

Support for new claims 22, 24, 27 and 29 is found, at least, on page 8, lines 15-18, and support for new claims 23, 25, 28 and 30 is found, at least, on page, lines 15-18 and in FIG. 2. Support for new claims 26 and 31 is found, at least, on page 11, line 5-10.

#### **1. The Rejection of Claims 1-21 Under 35 USC 102(e)**

Claims 1-21 stand rejected under 35 USC 102(e) as being anticipated by Lumelsky et al. (U.S. Pat. No. 6,516,350; hereinafter "Lumelsky").

With respect to applicants' original claim 1, the Examiner asserts that Lumelsky teaches "automatically activating said reserve resource when dictated by said resource usage policy" in col. 8, line 48 – col. 9, line 38. What Lumelsky teaches is:

...if there are no more sufficient available resources on all the servers managed by the system, the requested content may be replicated from the server (111) to the servers (113) and (114) and made available to clients (123) and (124). . .[T]he SCP (400) monitors the availability of the resources, maps the requests to the servers with available resources, predicts utilization of the end-resources and if necessary, dynamically re-distributes the content. Because the SCP enables borrowing of under used resources from servers (113) and (114) for increasing the resources of the server (111), for example, the resources at the server 111 grow sufficiently and on-time to satisfy expeditiously all the requests to the content on this server.

Lumelsky, col. 8, lines 48-51, and col. 9, lines 5-12.

As illustrated above, and elsewhere, Lumelsky teaches how to replicate content to under used resources so that access to the content may be achieved via

1) access to the original content, or 2) access to the replicated content. Of note, Lumelsky's decision to "replicate content" is based, in part, on identifying an available "set" of resources on another server, which "set" of resources is capable of providing additional or improved access to the replicated content. See, e.g., col. 12, lines 25-36.

Applicants' claim 1 has been amended to clarify that applicants' automatically activated reserve resource is a "hardware component". Thus, the decision process of applicants' claim 1 does not involve identifying a "set" of resources to which content can be replicated in order to provide additional or improved access to the "replicated content". Rather, the decision process of applicants' claim 1 is hardware-focused – i.e., a reserve "hardware component" is automatically activated when a load on monitored resources surpasses a threshold.

Although applicants could possibly apply Lumelsky's teachings (i.e., content replication) in addition to their own, it is noted that the invention of applicants' claim 1 is more granular than Lumelsky's, since the decision to activate a hardware component is based on the monitored load and the availability of the hardware component, and not on the availability of a "set" of resources to which software content may be replicated. Applicants' claim 1 is therefore believed to be allowable over Lumelsky's teachings.

Applicants' new claims 22 and 24 respectively recite that the activated reserve hardware component is a reserve processor or reserve memory. These claims therefore further specify the finer granularity with which applicants can activate reserve resources.

Applicants' new claims 23 and 25 respectively recite that an activated reserve processor or memory is a component of an already active server resource. Lumelsky, however, appears to replicate content to, and thereby activate the resources of, a server other than an already active server resource.

Applicants' new claim 26 recites that the threshold specified in claim 1's resource usage policy is a "rate of active resource consumption". Applicants can find no teaching by Lumelsky that resources are activated in response to a "rate" of consumption. Rather, it appears that Lumelsky only replicates content when demand for existing content reaches a specified "level" of demand.

For the above reasons, applicants' claims 22-26 are believed to be additionally allowable over Lumelsky.

Applicants' claims 2-10 are believed to be allowable at least for the reason that they depend from claim 1.


Applicants' claims 11-21 and 27-31 are believed to be allowable at least for reasons similar to why claims 1-10 and 22-26 are believed to be allowable.

Although applicants' claim 13 has been amended to clarify that applicants are activating a "reserve hardware component", it is noted that applicants' claim 13 also recites that resource activation is "based on a hierarchical resource deployment scheme". Lumelsky teaches no such hierarchy of resources to be deployed. Rather, Lumelsky merely replicates content to a set of resources that are capable of supporting the replicated content. Claim 13 is therefore believed to be allowable for this reason, as well as the reason that it depends from claim 1.

## 2. Conclusion

Given the above Remarks, applicants respectfully request the timely issuance of a Notice of Allowance.

Respectfully submitted,  
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Application of: )  
Francisco J. Romero, et al. )  
Serial No.: 09/709,705 )  
Filing Date: 11/09/2000 )  
For: APPARATUS AND METHOD TO )  
AUTOMATICALLY ACTIVATE A )  
RESERVE RESOURCE )  
Docket No.: 10002676-1 )

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I hereby certify that the attached **Transmittal Letter for Response/Amendment (in duplicate); Amendment (9 pages); and Post cards for return by the United States Patent and Trademark Office**, are all being deposited with the United States Postal Service addressed to the Commissioner for Patents, Mail Stop Amendment, P.O. Box 1450, Alexandria, VA 22313-1450, via Express Mail No. EL 964693159 US, on this 1st day of June 2004.

By: \_\_\_\_\_

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